

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

MID-CONTINENT CASUALTY	§	
COMPANY,	§	
	§	
Plaintiff	§	
	§	
v.	§	
	§	CIVIL ACTION NO. 1:22-cv-446-LY
WILLIAMS-AUSTIN BUILDERS,	§	
INC., SARAH AND JASON WILLIAMS,	§	
KRISTINA AND EVAN BAEHR, AND	§	
AS NEXT FRIEND TO C.B., M.B., E.B.,	§	
AND S.B.,	§	
	§	
Defendants	§	

DEFENDANTS KRISTINA AND EVAN BAEHR’S ORIGINAL ANSWER

Defendants Kristina and Evan Baehr (“Baehr Defendants”), individually and as next friends of C.B., M.B., E.B., AND S.B., file this Answer to Plaintiff’s Original Complaint for Declaratory Judgment (Dkt. 2) (the “Complaint”) as follows:

**I.
PARTIES**

1. The Baehr Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 1 of the Complaint.
2. The Baehr Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 2 of the Complaint.
3. The Baehr Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 3 of the Complaint.
4. The Baehr Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 4 of the Complaint.

5. The Baehr Defendants admit the allegations in paragraph 5 of the Complaint.

6. The Baehr Defendants admit the allegations in paragraph 6 of the Complaint.

II. JURISDICTION AND VENUE

7. The Baehr Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 7 of the Complaint.

8. The Baehr Defendants admit the allegations contained in paragraph 8 of the Complaint.

III. FACTS

9. The Baehr Defendants admit the allegations contained in paragraph 9 of the Complaint.

10. The Baehr Defendants admit the Underlying Lawsuit includes the allegations asserted in this paragraph 10 of the Complaint but deny that the allegations are limited to the recitations in this paragraph. The Baehr Defendants refer to the First Amended Petition for the full allegations.

11. The Baehr Defendants admit the Underlying Lawsuit includes the allegations asserted in this paragraph 11 of the Complaint but deny that the allegations are limited to the recitations in this paragraph. The Baehr Defendants refer to the First Amended Petition for the full allegations.

12. The Baehr Defendants admit the Underlying Lawsuit includes the allegations asserted in this paragraph 12 of the Complaint but deny that the allegations

are limited to the recitations in this paragraph. The Baehr Defendants refer to the First Amended Petition for the full allegations.

13. The Baehr Defendants admit the allegations contained in paragraph 13 of the Complaint.

14. The Baehr Defendants admit the Underlying Lawsuit includes the allegations asserted in this paragraph 14 of the Complaint but deny that the allegations are limited to the recitations in this paragraph. The Baehr Defendants refer to the First Amended Petition for the full allegations.

15. The Baehr Defendants admit the Underlying Lawsuit includes the allegations asserted in this paragraph 15 of the Complaint but deny that the allegations are limited to the recitations in this paragraph. The Baehr Defendants refer to the First Amended Petition for the full allegations. The Baehr Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 16 of the Complaint.

16. The Baehr Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 16 of the Complaint.

IV. MID-CONTINENT POLICIES

17. The Baehr Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 17 of the Complaint.

18. The Baehr Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 18 of the Complaint.

19. The Baehr Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 19 of the Complaint.

20. The Baehr Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 20 of the Complaint.

21. The Baehr Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 21 of the Complaint.

22. The Baehr Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 22 of the Complaint.

23. The Baehr Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 23 of the Complaint.

24. The Baehr Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 24 of the Complaint.

25. The Baehr Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 25 of the Complaint.

**V.
JUSTICIABLE INTEREST**

26. The Baehr Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 26 of the Complaint.

27. The Baehr Defendants admit the interests of Mid-Continent is adverse to the interests of the Baehr Defendants. The Baehr Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 27 of the Complaint.

28. The Baehr Defendants admit the allegations contained in paragraph 28 of the Complaint but lack knowledge or information sufficient to form a belief about whether this Court has diversity jurisdiction over the parties, as noted above.

VI.
COUNTS FOR DECLARATORY JUDGMENT
The Who Is An Insured Provision Does Not Extend to Sarah and Jason Williams, Individually¹

29. The Baehr Defendants re-allege and incorporate by reference their responses to the allegations contained in paragraph 1 to 26 above.

30. The Baehr Defendants admit the Underlying Lawsuit includes the allegations asserted in this paragraph 30 of the Complaint but deny that the allegations are limited to the recitations in this paragraph. The Baehr Defendants refer to the First Amended Petition for the full allegations.

31. The Baehr Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 31 of the Complaint.

32. The Baehr Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 32 of the Complaint.

33. The Baehr Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 33 of the Complaint.

34. The Baehr Defendants deny the allegations in paragraph 34 of the Complaint.

The Fungus, Mildew and Mold Exclusion Bars Coverage²

35. The Baehr Defendants re-allege and incorporate by reference their responses to the allegations contained in paragraphs 1 to 32 above.

36. The Baehr Defendants admit the allegations contained in paragraph 36 of the Complaint.

¹ This heading is not numbered. The Baehr Defendants deny this allegation.

² This heading is not numbered. The Baehr Defendants deny this allegation.

37. The Baehr Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 37 of the Complaint.

38. The Baehr Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 38 of the Complaint.

39. The Baehr Defendants deny the allegations contained in paragraph 39 of the Complaint.

40. The Baehr Defendants deny the allegations contained in paragraph 40 of the Complaint.

The Pollution Exclusion Bars Coverage³

41. The Baehr Defendants re-allege and incorporate by reference their responses to the allegations contained in paragraph 1 to 38 above.

42. The Baehr Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 42 of the Complaint.

43. The Baehr Defendants deny the allegations contained in paragraph 43 of the Complaint.

The Property Damage and Defective Work Exclusions Bar Coverage⁴

44. The Baehr Defendants re-allege and incorporate by reference their responses to the allegations contained in paragraphs 1 to 41 above.

45. The Baehr Defendants admit the Underlying Lawsuit includes the allegations asserted in this paragraph 45 of the Complaint but deny that the allegations are limited to the recitations in this paragraph. The Baehr Defendants refer to the First Amended Petition for the full allegations.

³ This heading is not numbered. The Baehr Defendants deny this allegation.

⁴ This heading is not numbered. The Baehr Defendants deny this allegation.

46. The Baehr Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 46 of the Complaint.

47. The Baehr Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 47 of the Complaint.

48. The Baehr Defendants deny that their claims are excluded by the Mid-Continent policies and lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 48 of the Complaint.

49. The Baehr Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 49 of the Complaint.

50. The Baehr Defendants deny the allegations in paragraph 50 of the Complaint.

The Impaired Property Exclusion Bars Coverage⁵

51. The Baehr Defendants re-allege and incorporate by reference their responses to the allegations contained in paragraphs 1 to 48 above.

52. The Baehr Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 52 of the Complaint.

53. The Baehr Defendants deny the allegations contained in paragraph 53 of the Complaint.

The Expected Or Intended Exclusion Bars Coverage⁶

54. The Baehr Defendants re-allege and incorporate by reference their responses to the allegations contained in paragraphs 1 to 51 above.

⁵ This heading is not numbered. The Baehr Defendants deny this allegation.

⁶ This heading is not numbered. The Baehr Defendants deny this allegation.

55. The Baehr Defendants admit the Underlying Lawsuit includes the allegations concerning knowing acts or omissions asserted in this paragraph 55 of the Complaint but deny that the allegations are limited to the recitations in this paragraph. The Baehr Defendants refer to the First Amended Petition for the full allegations.

56. The Baehr Defendants deny the allegations contained in paragraph 56 of the Complaint.

The Assumption of Liability in a Contract Exclusion Bars Coverage⁷

57. The Baehr Defendants re-allege and incorporate by reference their responses to the allegations contained in paragraph 1 to 54 above.

58. The Baehr Defendants deny the allegations asserted in this paragraph 58 of the Complaint.

59. The Baehr Defendants deny the allegations contained in paragraph 59 of the Complaint.

60. The Baehr Defendants deny the allegations contained in paragraph 60 of the Complaint.

Attorney's Fees are Not "Property Damage"⁸

61. The Baehr Defendants re-allege and incorporate by reference their responses to the allegations contained in paragraphs 1 to 58 of the Complaint.

62. The Baehr Defendants admit that they are seeking damages for attorney's fees but deny the remaining allegations in paragraph 62 of the Complaint.

63. The Baehr Defendants deny the allegations contained in paragraph 63 of the Complaint.

⁷ This heading is not numbered. The Baehr Defendants deny this allegation.

⁸ This heading is not numbered. The Baehr Defendants deny this allegation.

**VII.
OTHER DEFENSES**

- 64. Plaintiff failed to state a claim upon which relief may be granted.
- 65. Texas Civil Practice & Remedies Code § 38.0015 applies.
- 66. Mid-Continent has waived and/or is estopped from asserting no coverage.
- 67. In the alternative to Mid-Continent losing its claims based on the plain language of the policies, the provisions on which Mid-Continent relies are ambiguous and should be construed in favor of Defendants.

**VII.
PRAYER**

The Baehr Defendants deny that Plaintiff is entitled to any relief requested in its Prayer. The Baehr Defendants request that this Court deny Plaintiff relief and award the Baehr Defendants such fees and costs to which they may be entitled.

Respectfully submitted,

/s/ Blair Dancy

Blair Dancy

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